



General Assembly

**Substitute Bill No. 359**

February Session, 2006

\* SB00359PH 041706 \*

**AN ACT CONCERNING COMPETENCY TO STAND TRIAL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-56d of the 2006 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2006*):

4 (a) A defendant shall not be tried, convicted or sentenced while [he]  
5 the defendant is not competent. For the purposes of this section, a  
6 defendant is not competent if [he] the defendant is unable to  
7 understand the proceedings against him or her or to assist in his or her  
8 own defense.

9 (b) A defendant is presumed to be competent. The burden of  
10 proving that the defendant is not competent by a preponderance of the  
11 evidence and the burden of going forward with the evidence are on the  
12 party raising the issue. The burden of going forward with the evidence  
13 shall be on the state if the court raises the issue. The court may call its  
14 own witnesses and conduct its own inquiry.

15 (c) If, at any time during a criminal proceeding, it appears that the  
16 defendant is not competent, counsel for the defendant or for the state,  
17 or the court, on its own motion, may request an examination to  
18 determine the defendant's competency.

19 (d) If the court finds that the request for an examination is justified  
20 and that, in accordance with procedures established by the judges of  
21 the Superior Court, there is probable cause to believe that the  
22 defendant has committed the crime for which [he] the defendant is  
23 charged, the court shall order an examination of the defendant as to his  
24 or her competency. The court may (1) appoint one or more physicians  
25 specializing in psychiatry to examine the defendant, or (2) order the  
26 Commissioner of Mental Health and Addiction Services to conduct the  
27 examination either (A) by a clinical team consisting of a physician  
28 specializing in psychiatry, a clinical psychologist and one of the  
29 following: A clinical social worker licensed pursuant to chapter 383b or  
30 a psychiatric nurse clinical specialist holding a master's degree in  
31 nursing, or (B) by one or more physicians specializing in psychiatry,  
32 except that no employee of the Department of Mental Health and  
33 Addiction Services who has served as a member of a clinical team in  
34 the course of such employment for at least five years prior to October  
35 1, 1995, shall be precluded from being appointed as a member of a  
36 clinical team. If the Commissioner of Mental Health and Addiction  
37 Services is ordered to conduct the examination, the commissioner shall  
38 select the members of the clinical team or the physician or physicians.  
39 If the examiners determine that the defendant is not competent, [they]  
40 the examiners shall then determine whether there is a substantial  
41 probability that the defendant, if provided with a course of treatment,  
42 will regain competency within the maximum period of any placement  
43 order under this section. [, and] If the examiners determine that there  
44 is a substantial probability that the defendant, if provided with a  
45 course of treatment, will regain competency within the maximum  
46 period of any placement order under this section, the examiners shall  
47 then determine whether the defendant appears to be eligible for civil  
48 commitment, with monitoring by the Court Support Services Division,  
49 pursuant to subdivision (2) of subsection (h) of this section. The court  
50 may authorize a physician specializing in psychiatry, a clinical  
51 psychologist, a clinical social worker licensed pursuant to chapter 383b  
52 or a psychiatric nurse clinical specialist holding a master's degree in  
53 nursing selected by the defendant to observe the examination. Counsel

54 for the defendant may observe the examination. The examination shall  
55 be completed within fifteen days from the date it was ordered and the  
56 [examiner or] examiners shall prepare and sign, without notarization,  
57 a written report and file such report with the court within twenty-one  
58 business days of the date of the order. On receipt of the written report,  
59 the clerk of the court shall cause copies to be delivered immediately to  
60 the state's attorney and to counsel for the defendant.

61 (e) The court shall hold a hearing as to the competency of the  
62 defendant no later than ten days after [it] the court receives the written  
63 report. Any evidence regarding the defendant's competency, including  
64 the written report, may be introduced at the hearing by either the  
65 defendant or the state. If the written report is introduced, at least one  
66 of the examiners [must] shall be present to testify as to the  
67 determinations in the report, unless [his] the examiner's presence is  
68 waived by the defendant and the state. Any member of the clinical  
69 team shall be considered competent to testify as to the team's  
70 determinations. A defendant and [his] the defendant's counsel may  
71 waive the court hearing only if the examiners, in the written report,  
72 determine without qualification that the defendant is competent.

73 (f) If the court, after the hearing, finds that the defendant is  
74 competent, [it] the court shall continue with the criminal proceedings.  
75 If [it] the court finds that the defendant is not competent, [it] the court  
76 shall also find whether there is a substantial probability that the  
77 defendant, if provided with a course of treatment, will regain  
78 competency within the maximum period of any placement order  
79 permitted under this section.

80 (g) If, at the hearing, the court finds that there is not a substantial  
81 probability that the defendant, if provided with a course of treatment,  
82 will regain competency within the period of any placement order  
83 under this section, the court shall follow the procedure set forth in  
84 subsection (m) of this section.

85 (h) (1) If, at the hearing, the court finds that there is a substantial

86 probability that the defendant, if provided with a course of treatment,  
87 will regain competency within the period of any placement order  
88 under this section, the court shall either (A) order placement of the  
89 defendant for treatment for the purpose of rendering [him] the  
90 defendant competent, or (B) order placement of the defendant at a  
91 treatment facility pending civil commitment proceedings pursuant to  
92 subdivision (2) of this subsection.

93 (2) (A) Except as provided in subparagraph (B) of this subdivision, if  
94 the court makes a finding pursuant to subdivision (1) of this subsection  
95 and does not order placement pursuant to subparagraph (A) of said  
96 subdivision, the court shall, on its own motion or on motion of the  
97 state or the defendant, order placement of the defendant in the custody  
98 of the Commissioner of Mental Health and Addiction Services at a  
99 treatment facility pending civil commitment proceedings. The  
100 treatment facility shall be determined by the Commissioner of Mental  
101 Health and Addiction Services. Such order shall: (i) Include an  
102 authorization for the Commissioner of Mental Health and Addiction  
103 Services to apply for civil commitment of such defendant pursuant to  
104 sections 17a-495 to 17a-528, inclusive; (ii) permit the defendant to agree  
105 to request voluntarily to be admitted under section 17a-506 and  
106 participate voluntarily in a treatment plan prepared by the  
107 Commissioner of Mental Health and Addiction Services, and require  
108 that the defendant comply with such treatment plan; and (iii) provide  
109 that if the application for civil commitment is denied or not pursued  
110 by the Commissioner of Mental Health and Addiction Services, or if [,  
111 in the case of a defendant who is participating voluntarily in a  
112 treatment plan, such defendant ceases to so participate voluntarily] the  
113 defendant is unwilling or unable to comply with a treatment plan  
114 despite reasonable efforts of the treatment facility to encourage the  
115 defendant's compliance, the person in charge of the treatment facility,  
116 or such person's designee, shall submit a written progress report to the  
117 court [pursuant to subsection (j) of this section,] and the defendant  
118 shall be returned to the court for a hearing pursuant to subsection (k)  
119 of this section. Such written progress report shall include the status of

120 any civil commitment proceedings concerning the defendant, the  
121 defendant's compliance with the treatment plan, an opinion regarding  
122 the defendant's current competency to stand trial, the clinical findings  
123 of the person submitting the report and the facts upon which the  
124 findings are based, and any other information concerning the  
125 defendant requested by the court, including, but not limited to, the  
126 method of treatment or the type, dosage and effect of any medication  
127 the defendant is receiving. The Court Support Services Division shall  
128 monitor the defendant's compliance with any applicable provisions of  
129 such order. The period of placement and monitoring under such order  
130 shall not exceed the period of the maximum sentence which the  
131 defendant could receive on conviction of the charges against such  
132 defendant, or eighteen months, whichever is less. If the defendant has  
133 complied with such treatment plan and any applicable provisions of  
134 such order, at the end of the period of placement and monitoring, the  
135 court shall approve the entry of a nolle prosequi to the charges against  
136 the defendant or shall dismiss such charges.

137 (B) This subdivision shall not apply: (i) To any person charged with  
138 a class A felony, a class B felony, except a violation of section 53a-122  
139 that does not involve the use, attempted use or threatened use of  
140 physical force against another person, or a violation of section 14-227a,  
141 as amended, subdivision (2) of subsection (a) of section 53-21 or section  
142 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b;  
143 (ii) to any person charged with a crime or motor vehicle violation who,  
144 as a result of the commission of such crime or motor vehicle violation,  
145 causes the death of another person; or (iii) unless good cause is shown,  
146 to any person charged with a class C felony.

147 (i) The placement for treatment for the purpose of rendering the  
148 defendant competent shall comply with the following conditions: (1)  
149 The period of placement under the order or combination of orders  
150 shall not exceed the period of the maximum sentence which the  
151 defendant could receive on conviction of the charges against [him] the  
152 defendant or eighteen months, whichever is less; (2) the placement  
153 shall be either in the custody of the Commissioner of Mental Health

154 and Addiction Services, the Commissioner of Children and Families or  
155 the Commissioner of Mental Retardation or, if the defendant or the  
156 appropriate commissioner agrees to provide payment, in the custody  
157 of any appropriate mental health facility or treatment program which  
158 agrees to provide treatment to the defendant and to adhere to the  
159 requirements of this section; and (3) the court shall order the  
160 placement, on either an inpatient or an outpatient basis, which [it] the  
161 court finds is the least restrictive placement appropriate and available  
162 to restore competency. If outpatient treatment is the least restrictive  
163 placement for a defendant who has not yet been released from a  
164 correctional facility, the court shall consider whether the availability of  
165 [that] such treatment is a sufficient basis on which to release the  
166 defendant on a promise to appear, conditions of release, cash bail or  
167 bond. If the court determines that the defendant may not be so  
168 released, the court shall order treatment of the defendant on an  
169 inpatient basis at a mental health facility or mental retardation facility.

170 (j) The person in charge of the treatment facility, or such person's  
171 designee, shall submit a written progress report to the court (1) at least  
172 seven days prior to the date of any hearing on the issue of the  
173 defendant's competency; (2) whenever he or she believes that the  
174 defendant has attained competency; (3) whenever he or she believes  
175 that there is not a substantial probability that the defendant will attain  
176 competency within the period covered by the placement order; or (4)  
177 whenever, within the first one hundred twenty days of the period  
178 covered by the placement order, he or she believes that the defendant  
179 [has been placed for treatment pending] would be eligible for civil  
180 commitment [proceedings] pursuant to subdivision (2) of subsection  
181 (h) of this section. [and the application for civil commitment of the  
182 defendant is denied or not pursued.] The progress report shall contain:  
183 (A) The clinical findings of the person submitting the report and the  
184 facts on which the findings are based; (B) the opinion of the person  
185 submitting the report as to whether the defendant has attained  
186 competency or as to whether the defendant is making progress, under  
187 treatment, toward attaining competency within the period covered by

188 the placement order; and (C) any other information concerning the  
189 defendant requested by the court, including, but not limited to, the  
190 method of treatment or the type, dosage and effect of any medication  
191 the defendant is receiving.

192 (k) (1) When any placement order for treatment is rendered or  
193 continued, the court shall set a date for a hearing, to be held within  
194 ninety days, for reconsideration of the issue of the defendant's  
195 competency. Whenever the court (A) receives a report pursuant to  
196 subsection (j) of this section which indicates that [(A)] (i) the defendant  
197 has attained competency, [(B)] (ii) the defendant will not attain  
198 competency within the remainder of the period covered by the  
199 placement order, [(C)] (iii) the defendant will not attain competency  
200 within the remainder of the period covered by the placement order  
201 absent administration of psychiatric medication for which the  
202 defendant is unwilling or unable to provide consent, or [(D)] (iv) the  
203 defendant [has been placed for treatment pending] would be eligible  
204 for civil commitment [proceedings] pursuant to subdivision (2) of  
205 subsection (h) of this section, [and the application for civil commitment  
206 of the defendant is denied or not pursued] or (B) receives a report  
207 pursuant to subparagraph (A)(iii) of subdivision (2) of subsection (h)  
208 of this section which indicates that (i) the application for civil  
209 commitment of the defendant has been denied or has not been  
210 pursued by the Commissioner of Mental Health and Addiction  
211 Services, or (ii) the defendant is unwilling or unable to comply with a  
212 treatment plan despite reasonable efforts of the treatment facility to  
213 encourage the defendant's compliance, the court shall set the matter  
214 for a hearing no later than ten days after the report is received. The  
215 hearing may be waived by the defendant only if the report indicates  
216 that the defendant is competent. The court shall determine whether the  
217 defendant is competent or is making progress toward attainment of  
218 competency within the period covered by the placement order. If the  
219 court finds that the defendant is competent, the defendant shall be  
220 returned to the custody of the Commissioner of Correction or released,  
221 if the defendant has met the conditions for release, and the court shall

222 continue with the criminal proceedings. If the court finds that the  
223 defendant is still not competent but that the defendant is making  
224 progress toward attaining competency, [it] the court may continue or  
225 modify the placement order. If the court finds that the defendant is still  
226 not competent and will not attain competency within the remainder of  
227 the period covered by the placement order absent administration of  
228 psychiatric medication for which the defendant is unwilling or unable  
229 to provide consent, [it] the court shall proceed as provided in  
230 subdivisions (2) and (3) of this subsection. If the court finds that the  
231 defendant is eligible for civil commitment, the court may order  
232 placement of the defendant at a treatment facility pending civil  
233 commitment proceedings pursuant to subdivision (2) of subsection (h)  
234 of this section.

235 (2) If the court finds that the defendant will not attain competency  
236 within the remainder of the period covered by the placement order  
237 absent administration of psychiatric medication for which the  
238 defendant is unwilling or unable to provide consent, and after any  
239 hearing held pursuant to subdivision (3) of this subsection, [it] the  
240 court may order the involuntary medication of the defendant if [it] the  
241 court finds by clear and convincing evidence that: (A) To a reasonable  
242 degree of medical certainty involuntary medication of the defendant  
243 will render the defendant competent to stand trial, (B) an adjudication  
244 of guilt or innocence cannot be had using less intrusive means, (C) the  
245 proposed treatment plan is narrowly tailored to minimize intrusion on  
246 the defendant's liberty and privacy interests, (D) the proposed drug  
247 [regime] regimen will not cause an unnecessary risk to the defendant's  
248 health, and (E) the seriousness of the alleged crime is such that the  
249 criminal law enforcement interest of the state in fairly and accurately  
250 determining the defendant's guilt or innocence overrides the  
251 defendant's interest in self-determination.

252 (3) If the court finds that the defendant is unwilling or unable to  
253 provide consent for the administration of psychiatric medication, and  
254 prior to deciding whether to order the involuntary medication of the  
255 defendant under subdivision (2) of this subsection, the court shall



256 appoint a health care guardian who shall be a licensed health care  
257 provider with specialized training in the treatment of persons with  
258 psychiatric disabilities to represent the health care interests of the  
259 defendant before the court. Notwithstanding the provisions of section  
260 52-146e, such health care guardian shall have access to the psychiatric  
261 records of the defendant. Such health care guardian shall file a report  
262 with the court not later than thirty days after his or her appointment.  
263 The report shall set forth such health care guardian's findings and  
264 recommendations concerning the administration of psychiatric  
265 medication to the defendant including the risks and benefits of such  
266 medication, the likelihood and seriousness of any adverse side effects  
267 and the prognosis with and without such medication. The court shall  
268 hold a hearing on the matter not later than ten days after receipt of  
269 such health care guardian's report and shall, in deciding whether to  
270 order the involuntary medication of the defendant, take into account  
271 such health care guardian's opinion concerning the health care  
272 interests of the defendant.

273 (4) The state shall hold harmless and indemnify any health care  
274 guardian appointed by the court pursuant to subdivision (3) of this  
275 subsection from financial loss and expense arising out of any claim,  
276 demand, suit or judgment by reason of such health care guardian's  
277 alleged negligence or alleged deprivation of any person's civil rights or  
278 other act or omission resulting in damage or injury, provided the  
279 health care guardian is found to have been acting in the discharge of  
280 his or her duties pursuant to said subdivision [(3)] and such act or  
281 omission is found not to have been wanton, reckless or malicious. The  
282 provisions of subsections (b), (c) and (d) of section 5-141d, as amended,  
283 shall apply to such health care guardian. The provisions of chapter 53  
284 shall not apply to a claim against such health care guardian.

285 (l) If a defendant who has been ordered placed for treatment on an  
286 inpatient basis at a mental health facility or mental retardation facility  
287 is released from such facility on a furlough or for work, therapy or any  
288 other reason and fails to return to the facility in accordance with the  
289 terms and conditions of [his] the defendant's release, the person in

290 charge of the facility, or [his] such person's designee, shall, within  
291 twenty-four hours of the defendant's failure to return, report such  
292 failure to the prosecuting authority for the court location which  
293 ordered the placement of the defendant. Upon receipt of such a report,  
294 the prosecuting authority shall, within available resources, make  
295 reasonable efforts to notify any victim or victims of the crime for which  
296 the defendant is charged of such defendant's failure to return to the  
297 facility. No civil liability shall be incurred by the state or the  
298 prosecuting authority for failure to notify any victim or victims in  
299 accordance with this subsection. The failure of a defendant to return to  
300 the facility in which [he] the defendant has been placed may constitute  
301 sufficient cause for [his] the defendant's rearrest upon order by the  
302 court.

303 (m) If at any time the court determines that there is not a substantial  
304 probability that the defendant will attain competency within the  
305 period of treatment allowed by this section, or if at the end of such  
306 period the court finds that the defendant is still not competent, the  
307 court shall either release the defendant from custody or order the  
308 defendant placed in the custody of the Commissioner of Mental Health  
309 and Addiction Services, the Commissioner of Children and Families or  
310 the Commissioner of Mental Retardation. The commissioner given  
311 custody, or the commissioner's designee, shall then apply for civil  
312 commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270  
313 to 17a-282, inclusive, and 17a-495 to 17a-528, inclusive. The court shall  
314 hear arguments as to whether the defendant should be released or  
315 should be placed in the custody of the Commissioner of Mental Health  
316 and Addiction Services, the Commissioner of Children and Families or  
317 the Commissioner of Mental Retardation. If the court orders the release  
318 of a defendant charged with the commission of a crime that resulted in  
319 the death or serious physical injury, as defined in section 53a-3, of  
320 another person, or orders the placement of such defendant in the  
321 custody of the Commissioner of Mental Health and Addiction  
322 Services, the court may, on its own motion or on motion of the  
323 prosecuting authority, order, as a condition of such release or

324 placement, periodic examinations of the defendant as to [his] the  
325 defendant's competency. Such an examination shall be conducted in  
326 accordance with subsection (d) of this section. Upon receipt of the  
327 written report as provided in subsection (d) of this section, the court  
328 shall, upon the request of either party filed not later than thirty days  
329 after the court receives such report, conduct a hearing as provided in  
330 subsection (e) of this section. Such hearing shall be held not later than  
331 ninety days after the court receives such report. If the court finds that  
332 the defendant has attained competency, [he] the defendant shall be  
333 returned to the custody of the Commissioner of Correction or released,  
334 if [he] the defendant has met the conditions for release, and the court  
335 shall continue with the criminal proceedings. Periodic examinations  
336 ordered by the court under this subsection shall continue until the  
337 court finds that the defendant has attained competency or until the  
338 time within which the defendant may be prosecuted for the crime with  
339 which [he] the defendant is charged, as provided in section 54-193 or  
340 54-193a, has expired, whichever occurs first. The court shall dismiss,  
341 with or without prejudice, any charges for which a nolle prosequi is  
342 not entered when the time within which the defendant may be  
343 prosecuted for the crime with which [he] the defendant is charged, as  
344 provided in section 54-193 or 54-193a, has expired. Notwithstanding  
345 the erasure provisions of section 54-142a, police and court records and  
346 records of any state's attorney pertaining to a charge which is nolleed or  
347 dismissed without prejudice while the defendant is not competent  
348 shall not be erased until the time for the prosecution of the defendant  
349 expires under section 54-193 or 54-193a. A defendant who is not civilly  
350 committed as a result of an application made by the Commissioner of  
351 Mental Health and Addiction Services, the Commissioner of Children  
352 and Families or the Commissioner of Mental Retardation pursuant to  
353 this section shall be released. A defendant who is civilly committed  
354 pursuant to such an application shall be treated in the same manner as  
355 any other civilly committed person.

356 (n) The cost of the examination effected by the Commissioner of  
357 Mental Health and Addiction Services and of testimony of persons

conducting the examination effected by the commissioner shall be paid by the Department of Mental Health and Addiction Services. The cost of the examination and testimony by physicians appointed by the court shall be paid by the Judicial Department. If the defendant is indigent, the fee of the person selected by the defendant to observe the examination and to testify on [his] the defendant's behalf shall be paid by the Public Defender Services Commission. The expense of treating a defendant placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation pursuant to subdivision (2) of subsection (h) of this section or subsection (i) of this section shall be computed and paid for in the same manner as is provided for persons committed by a probate court under the provisions of sections 17b-122, 17b-124 to 17b-132, inclusive, 17b-136 to 17b-138, inclusive, 17b-194 to 17b-197, inclusive, 17b-222 to 17b-250, inclusive, 17b-256, 17b-263, 17b-340 to 17b-350, inclusive, as amended, 17b-689b and 17b-743 to 17b-747, inclusive.

(o) Until the hearing is held, the defendant, if not released on a promise to appear, conditions of release, cash bail or bond, shall remain in the custody of the Commissioner of Correction unless hospitalized as provided in sections 17a-512 to 17a-517, inclusive, as amended.

(p) This section shall not be construed to require the Commissioner of Mental Health and Addiction Services to place any violent defendant in a mental institution which does not have the trained staff, facilities and security to accommodate such a person.

(q) This section shall not prevent counsel for the defendant from raising, prior to trial and while the defendant is not competent, any issue susceptible of fair determination.

(r) Actual time spent in confinement on an inpatient basis pursuant to this section shall be credited against any sentence imposed on the defendant in the pending criminal case or in any other case arising out

390 of the same conduct in the same manner as time is credited for time  
391 spent in a correctional facility awaiting trial.

|   |  |  |
|---|--|--|
| This act shall take effect as follows and shall amend the following sections: |  |  |
|---|--|--|

|           |                        |        |
|-----------|------------------------|--------|
| Section 1 | <i>October 1, 2006</i> | 54-56d |
|-----------|------------------------|--------|

***JUD***      *Joint Favorable Subst.*

***PH***        *Joint Favorable*